ARC 8481B

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 38, "Administration," Chapter 40, "Determination of Net Income," Chapter 43, "Assessments and Refunds," Chapter 46, "Withholding," Chapter 50, "Apportionment of Income for Resident Shareholders of S Corporations," and Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

These amendments are proposed as a result of 2009 Iowa Acts, House File 810, and 2009 Iowa Acts, Senate Files 142, 376, 389, 457, 478 and 482.

Item 1 amends rule 701—38.19(422) to provide that the indication of dependent child health care coverage on Iowa individual income tax returns will be mandatory starting with the tax year beginning January 1, 2010.

Item 2 amends rule 701—40.1(422) to reference new rules 701—40.73(422) and 701—40.74(422).

Item 3 amends rule 701—40.3(422) to provide that Iowa Jobs Program bonds are exempt from Iowa income tax.

Item 4 amends the implementation clause for rule 701—40.3(422).

Items 5 and 6 amend rule 701—40.47(422) to provide additional examples and clarification on the partial exclusion from Iowa individual income tax of pension and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors.

Item 7 adopts new rule 701—40.73(422) relating to the exclusion for Iowa individual income tax of health care benefits of nonqualified dependents.

Item 8 adopts new rule 701—40.74(422) relating to the exclusion for Iowa individual income tax of AmeriCorps Segal Education Awards.

Item 9 adopts new subrule 43.8(5) to reflect the repeal of the livestock production credit refund for refund claims filed on or after November 1, 2008.

Item 10 amends the implementation clause for rule 701—43.8(422).

Item 11 amends subrule 46.9(2) to reflect the repeal of the alternative credit for housing assistance programs for Iowa withholding tax.

Item 12 amends the implementation clause for rule 701—46.9(422).

Item 13 amends rule 701—50.7(422) to clarify that if an Iowa resident taxpayer claims the S corporation apportionment credit, the resident taxpayer may still claim an out-of-state tax credit for taxes paid to another state or foreign country for income other than S corporation income.

Item 14 amends subrule 52.10(5) to provide that the Department of Revenue will now issue the tax credit certificates for certain sales taxes paid by a third-party developer.

Item 15 amends the implementation clause for rule 701—52.10(15).

Item 16 adopts new subrule 52.27(4) to provide that owners of small wind energy systems operating within a small wind innovation zone are eligible for the renewable energy tax credit for corporation income tax.

Item 17 amends the implementation clause for rule 701—52.27(422,476C).

Item 18 adopts new rule 701—52.42(16,422) which provides for a disaster recovery housing project tax credit for corporation income tax.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than February 13, 2010, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before February 2, 2010. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by February 12, 2010.

These amendments are intended to implement 2009 Iowa Acts, House File 810 [Iowa Code Supplement section 476.48]; Iowa Code section 15.331C as amended by 2009 Iowa Acts, Senate File 142; 2009 Iowa Acts, Senate File 376 [Iowa Code Supplement section 12.87]; Iowa Code sections 422.7 and 422.12M as amended by 2009 Iowa Acts, Senate File 389; 2009 Iowa Acts, Senate File 457 [Iowa Code Supplement section 16.191]; Iowa Code sections 15E.196, 422.120, 422.121 and 422.122 as amended by 2009 Iowa Acts, Senate File 478; and Iowa Code section 422.7 as amended by 2009 Iowa Acts, Senate File 482.

The following amendments are proposed.

ITEM 1. Amend rule 701—38.19(422) as follows:

701—38.19(422) Indication of dependent child health care coverage on tax return. For tax years beginning on or after January 1, 2008, but before January 1, 2010, an individual who is an Iowa resident as of December 31 of the tax year who files an Iowa individual income tax return may report on the return the presence or absence of health care coverage for each dependent child as of December 31 of the tax year for which the exemption credit described in 701—subrule 42.2(1), paragraph *"c,"* is claimed. ~~It~~ For tax years beginning on or after January 1, 2008, but before January 1, 2010, it is not mandatory that a taxpayer indicate on the tax return the presence or absence of health care coverage for each dependent, and there is no penalty if this information is not provided on the tax return. For tax years beginning on or after January 1, 2010, it is mandatory that a taxpayer indicate on the tax return the presence or absence of health care coverage for each dependent. The Iowa return will not be considered complete until the indication of the presence or absence of health care coverage for each dependent is made on the return.

38.19(1) No change.

38.19(2) *Notification to the taxpayer.* If the taxpayer indicates on the return that a dependent child does not have health care coverage and the taxpayer's income reflected on the tax return is within the eligibility requirements for either the Medicaid program or the HAWK-I program, the department will send a letter to the taxpayer indicating that the dependent may be eligible for health care coverage under either the Medicaid or HAWK-I program. The letter will also enclose an application for health care coverage under either the Medicaid or HAWK-I program which can be completed and sent to the Iowa department of human services. The taxpayer must submit the application to the Iowa department of human services within 90 days of receipt of the enrollment information from the department of revenue. The department of human services will make the final determination on whether the taxpayer is eligible under the Medicaid or HAWK-I program. A dependent child must be under the age of 21 to be eligible for the Medicaid program, and a dependent child must be under the age of 19 to be eligible for the HAWK-I program.

38.19(3) *Reporting requirements.* The department, in cooperation with the department of human services, must submit an annual report to the governor and the general assembly which will include the following:

a. Number of Iowa families, by income level, who claim the personal exemption credit for dependent children described in 701—subrule 42.2(1), paragraph *"c."*

b. The number of Iowa families, by income level, who claim the personal exemption credit ~~who also~~ and whether they indicated the presence or absence of health care coverage for their dependent children.

c. The ~~effect of these reporting and notification requirements on the number and percentage of children in Iowa who are uninsured~~ number of Iowa families, by income level, claiming the personal exemption credit who received enrollment information from the department of revenue and who subsequently applied and were enrolled in either the Medicaid or HAWK-I program.

This rule is intended to implement ~~2008 Iowa Acts, House File 2539, section 4~~ Iowa Code section 422.12M as amended by 2009 Iowa Acts, Senate File 389, section 15.

ITEM 2. Amend rule 701—40.1(422), introductory paragraph, as follows:

701—40.1(422) Net income defined. Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code and shall include the adjustments in 40.2(422) to 40.9(422). The remaining provisions of this rule and 40.12(422) to ~~40.72(422)~~ 40.74(422) shall also be applicable in determining net income.

ITEM 3. Amend rule **701—40.3(422)** by adopting the following **new** numbered paragraph **"26"**:

26. Iowa jobs program bonds: Bonds issued under 2009 Iowa Acts, Senate File 376, section 1.

ITEM 4. Amend rule **701—40.3(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 12.71, 261A.27, ~~and~~ 357A.15~~;~~, ~~Iowa Code Supplement section 463C.12 as amended by 2006 Iowa Acts, chapter 1004, section 3; and Iowa Code Supplement section 422.7 as amended by 2006 Iowa Acts, chapter 1179, section 71~~ 422.7, 463C.12 and Iowa Code Supplement section 12.87.

ITEM 5. Amend rule 701—40.47(422), introductory paragraph, as follows:

701—40.47(422) Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors. For tax years beginning on or after January 1, 1995, an individual who is disabled, is 55 years of age or older, is a surviving spouse, or is a survivor with an insurable interest in an individual who would have qualified for the exclusion is eligible for a partial exclusion of retirement benefits received in the tax year. For tax years beginning on or after January 1, 2001, the partial exclusion of retirement benefits received in the tax year is increased up to a maximum of $6,000 for a person other than a husband or wife who files a separate state return and up to a maximum of $12,000 for a husband and wife who file a joint Iowa return. For tax years beginning on or after January 1, 1998, the partial exclusion of retirement benefits received in the tax year was increased up to a maximum of $5,000 for a person, other than a husband or wife who files a separate state income tax return, and up to a maximum of $10,000 for a husband and wife who file a joint state income tax return. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined exclusion of retirement benefits of up to a maximum of $10,000 for tax years beginning in 1998, 1999 and 2000 and a combined exclusion of up to a maximum of $12,000 for tax years beginning on or after January 1, 2001. The $10,000 or $12,000 exclusion ~~may~~ shall be allocated to the husband and wife in the proportion that each spouse's respective pension and retirement benefits received bear to the total combined pension and retirement benefits received by both spouses.

ITEM 6. Adopt the following **new** Examples 3 and 4 to follow Examples 1 and 2 in rule **701—40.47(422)**:

EXAMPLE 3. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of $20,000. The other spouse was 55 years of age and received no pension income. Since the spouse receiving the pension income was not 55 years of age, no exclusion is allowed on the Iowa return.

EXAMPLE 4. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of $10,000. The other spouse was 55 years of age and received a pension income of $8,000. Since only one spouse receiving the pension income was 55 years of age, an exclusion of $8,000 is allowed on the Iowa return. The exclusion of $8,000 is allowed since a married couple is allowed a combined exclusion of up to $12,000.

ITEM 7. Adopt the following **new** rule 701—40.73(422):

701—40.73(422) Exclusion for health care benefits of nonqualified tax dependents. Effective for tax years beginning on or after January 1, 2009, a taxpayer may exclude from Iowa individual income tax the income reported from including nonqualified tax dependents on the taxpayer's health care plan, to the extent this income was reported on the federal income tax return.

40.73(1) *Term of coverage.* Iowa Code section 509A.13B provides that group insurance, group insurance for public employees, and individual health insurance policies or contracts permit continuation of existing coverage for an unmarried child of an insured or enrollee, if the insured or enrollee so elects. If the election is made, it will be in effect through the policy anniversary date on or after the date the child marries, ceases to be a resident of Iowa, or attains the age of 25, whichever occurs first, so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education. These children can be included on the health care coverage even though they are not claimed as a dependent on the federal and Iowa income tax returns.

40.73(2) *Federal treatment.* Section 105(b) of the Internal Revenue Code provides that the income reported from including dependents on the taxpayer's health care coverage is exempt from federal income tax. However, income is reported for federal income tax purposes on the value of the health care coverage of children who are not claimed as dependents on the taxpayer's federal and Iowa income tax returns. The amount of income included on the federal income tax return is allowed to be excluded on the Iowa return.

This rule is intended to implement Iowa Code section 422.7 as amended by 2009 Iowa Acts, Senate File 389.

ITEM 8. Adopt the following **new** rule 701—40.74(422):

701—40.74(422) Exclusion for AmeriCorps Segal Education Award. Effective for tax years beginning on or after January 1, 2010, a taxpayer may exclude from Iowa individual income tax any amount of AmeriCorps Segal Education Award to the extent the education award was reported as income on the federal income tax return. The AmeriCorps Segal Education Award is available to individuals who complete a year of service in the AmeriCorps program. The education award can be used to pay education costs at institutions of higher learning, for educational training, or to repay qualified student loans.

This rule is intended to implement Iowa Code section 422.7 as amended by 2009 Iowa Acts, Senate File 482.

ITEM 9. Adopt the following **new** subrule 43.8(5):

43.8(5) *Repeal of the livestock production credit refund.* The livestock production credit was repealed on November 1, 2008, for refund claims filed on or after that date. Any livestock production credit refunds requested on Iowa tax returns filed on or after November 1, 2008, will not be issued.

ITEM 10. Amend rule **701—43.8(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 422.120, 422.121, and 422.122 as amended by 2009 Iowa Acts, Senate File 478, section 152.

ITEM 11. Amend subrule 46.9(2) as follows:

46.9(2) *Alternative credit for housing assistance programs.* As an alternative to the credit described in subrule 46.9(1) for eligible businesses in an enterprise zone, a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs. A credit equal to 1.5 percent of the wages paid to employees participating in a housing assistance program may be claimed on the Iowa withholding tax return for wages paid prior to July 1, 2009. Effective July 1, 2009, the alternative credit for housing assistance programs was repealed. The administrative rules for the enterprise zone program administered by the Iowa department of economic development may be found in 261—Chapter 59.

ITEM 12. Amend rule **701—46.9(15)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 15E.196 as amended by 2009 Iowa Acts, Senate File 478, section 104, and ~~Supplement~~ section 15E.197.

ITEM 13. Amend rule 701—50.7(422) as follows:

701—50.7(422) Credit for taxes paid to another state. If a taxpayer elects to take advantage of the apportionment provisions for a resident shareholder of an S corporation, then the taxpayer may not take a credit against Iowa income tax for income taxes or taxes measured by income paid to another state or foreign country on the S corporation income. A taxpayer may claim a credit against Iowa income tax for income taxes or taxes measured by income paid to another state or foreign country on income other than S corporation income that may be earned in the tax year.

This rule is intended to implement Iowa Code section 422.8.

ITEM 14. Amend paragraph **52.10(5)"b"** as follows:

b. How to claim the credit. The third-party developer must provide to the Iowa department of economic development the amount of Iowa sales and use tax paid as described in paragraph *"a."* Beginning on July 1, 2009, this information must be provided to the Iowa department of revenue. The amount of Iowa sales and use tax attributable to racks, shelving, and conveyor equipment must be identified separately.

The Iowa department of economic development will issue a tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility. In addition, the Iowa department of economic development will also issue a separate tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center. Beginning on July 1, 2009, the Iowa department of revenue shall issue these tax credit certificates.

The tax credit certificate shall contain the name, address, and tax identification number of the eligible business, along with the amount of the tax credit and the year in which the tax credit can be claimed. The tax credit certificate must be attached to the taxpayer's income tax return for the tax year for which the tax credit is claimed. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following seven years or until it is used, whichever is the earlier.

For the tax credit certificate relating to Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment, the aggregate amount of tax credit certificates and tax refunds for Iowa sales and use tax paid for racks, shelving, and conveyor equipment to eligible businesses under the new jobs and income program, enterprise zone program and new capital investment program cannot exceed $500,000 in a fiscal year. The requests for tax credit certificates or refunds will be processed in the order they are received on a first-come, first-served basis until the amount of credits authorized for issuance has been exhausted. If applications for tax credit certificates or refunds exceed the $500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

ITEM 15. Amend rule **701—52.10(15)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~sections~~ section 15.331C as amended by 2009 Iowa Acts, Senate File 142, and sections 15.333 and 15.335.

ITEM 16. Adopt the following **new** subrule 52.27(4):

52.27(4) *Small wind innovation zones.* Effective for tax years beginning on or after January 1, 2009, an owner of a small wind energy system operating within a small wind innovation zone which has been approved by the Iowa utilities board is eligible for the renewable energy tax credit. The administrative rules of the Iowa utilities board for the certification of eligibility for owners of small wind energy systems operating within a small wind innovation zone may be found in rule 199—15.22(476).

ITEM 17. Amend rule **701—52.27(422,476C)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.33 and chapter 476C as amended by 2009 Iowa Acts, Senate File 456 and House File 810.

ITEM 18. Adopt the following **new** rule 701—52.42(16,422):

701—52.42(16,422) Disaster recovery housing project tax credit. For tax years beginning on or after January 1, 2011, a disaster recovery housing project tax credit is available for corporation income tax. The credit is equal to 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project, and is administered by the Iowa finance authority. Qualifying investments are costs incurred on or after May 12, 2009, and prior to July 1, 2010, related to a disaster recovery housing project. Eligible properties must have applied for and received an allocation of federal low-income housing tax credits under Section 42 of the Internal Revenue Code to be eligible for the tax credit. The administrative rules of the Iowa finance authority for the disaster recovery housing project tax credit may be found at 265—Chapter 34.

52.42(1) *Issuance of tax credit certificates.* Upon completion of the project and verification of the amount of investment made in the disaster recovery housing project, the Iowa finance authority will issue a tax credit certificate to the taxpayer. The tax credit certificate shall include the taxpayer's name, address, tax identification number, amount of credit, and the tax year for which the credit may be claimed. The tax credit certificates will be issued on a first-come, first-served basis. The tax credit cannot be transferred to any other person or entity.

52.42(2) *Limitation of tax credits.* The tax credit shall not exceed 75 percent of the taxpayer's qualifying business in a disaster recovery housing project. The maximum amount of tax credits issued by the Iowa finance authority shall not exceed $3 million in each of the five consecutive years beginning in the 2011 calendar year. A tax credit certificate shall be issued by the Iowa finance authority for each year that the credit can be claimed.

52.42(3) *Claiming the tax credit.* The amount of the tax credit earned by the taxpayer will be divided by five and an amount equal thereto will be claimed on the Iowa corporation income tax return commencing with the tax year beginning on or after January 1, 2011. A taxpayer is not entitled to a refund of the excess tax for any tax credit in excess of the tax liability, and also is not entitled to carry forward any excess credit to a subsequent tax year.

If the taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The increase in the basis of the property that would otherwise result from the disaster recovery housing investment shall be reduced by the amount of the tax credit allowed.

EXAMPLE: A corporation whose tax year ends on December 31 incurs $100,000 of costs related to an eligible disaster recovery housing project. The taxpayer receives a tax credit of $75,000, and $15,000 of credit can be claimed on each Iowa corporation income tax return for the periods ending December 31, 2011, through December 31, 2015. If the tax liability for the corporation for the period ending December 31, 2011, is $10,000, the credit is limited to $10,000, and the remaining $5,000 credit cannot be used.

If the tax liability for the corporation for the period ending December 31, 2012, is $25,000, the credit is limited to $15,000, and the remaining $5,000 credit from 2011 cannot be used to reduce the tax for 2012.

52.42(4) *Potential recapture of tax credits.* If the taxpayer fails to comply with the eligibility requirements of the project or violates local zoning and construction ordinances, the Iowa finance authority can void the tax credit and the department of revenue shall seek recovery of the value of any tax credit claimed on a corporation income tax return.

This rule is intended to implement Iowa Code Supplement sections 16.191 and 16.192 and Iowa Code section 422.33 as amended by 2009 Iowa Acts, Senate File 457.